

CITY OF LEWISTON
PLANNING BOARD MEETING
MINUTES for November 22, 2010

- I. **ROLL CALL:** The meeting was held in the City Council Chambers on the First Floor of City Hall and was called to order at 5:30 p.m. Chairperson Lucy Bisson, chaired the meeting.

Members in Attendance: Lucy Bisson, Bruce Damon, Denis Fortier, Paul Robinson and Kevin Morissette

Members Absent: Eric Potvin and Trinh Burpee

Associate Member Present: Michael Marcotte and Sandra Marquis

Staff Present: David Hediger, City Planner, Gil Arsenault, Director of Planning & Code and Cathy Lekberg, Administrative Assistant, Economic & Community Development

Michael Marcotte and Sandra Marquis were appointed as full voting members for his meeting.

- II. **ADJUSTMENT TO THE AGENDA:** Lucy stated that she would like to make a slight adjustment to the agenda. Platz Associates requested that new plans be signed by her as the Chairperson. At the Loft at the Bates Mill Complex, there was a slight change in the number of units that are going to be built and they are going down from 52 to 48 units and the square footage is being reduced from 62,300 to 50,483. She asked Steve Myers if he wanted to make any comments to the Board and Steve stated that the reason for fewer units was when they were applying for the National Historic Register nomination, they discovered that the units in the north end of each floor were intruding into the connector building which is considered by Historic Preservation a separate building, so they had to keep the project in Mill #2. At the same time, they were able to increase the number of two bedroom units from 10 to 16 so there are fewer one bedroom units.

Lucy stated this was treated as a de minimus change and she wanted to make the Board aware of what was happening. Bruce asked if this will require a motion and David stated it was not necessary.

- III. **CORRESPONDENCE:** None

- IV. **WORKSHOP:**

Presentation by Maine Turnpike Authority regarding proposed improvements at Exit 80 and Alfred A. Plourde Parkway.

Roland Lavallee from HNTB Corporation presented a slide presentation to the Board and the public regarding the interchange project. He stated the downtown connector study public hearing was held on October 4, 2010 and they have looked at three interchange concepts, 1) to modify the existing loop and slip

ramps, 2) diamond interchange and 3) single point urban interchange (SPUI). He showed the Board maps of each interchange concept. He showed the Board the preliminary results which showed that the SPUI would give the maximum benefit of all three. He also showed a moving model of how the SPUI would flow. He stated they are looking to start the project in 2011.

Paul asked how is this being financed and Roland stated that modifications of the interchange are being paid for by the Turnpike and the modification of Plourde Parkway are being paid for by MDOT. Paul asked would the City be paying for some of this and Roland stated no. Ed Barrett stated they do not have all the money yet. He stated they have approximately \$5,000,000 to get started. He stated they are not sure what the total cost will be. Paul asked what would be done first and Roland stated the work on Plourde Parkway will be worked on first, followed by the intersection modification, and the SPUI.

V. PUBLIC MEETING:

A proposed amendment to Appendix A, Article II, Definitions, Article V, Administration and Enforcement, and Article IX, District Regulations pertaining to marijuana dispensaries and registered primary caregivers (continued from November 8, 2010).

Gil stated staff had not received the City Attorney's opinion at the last meeting and we needed to continue that public hearing. The City Attorney had concerns that staff was going too far with our regulation of the primary caregivers not the dispensaries. He suggested taking out much of the language that was duplicate of the state rules and state licensing as well. Some of our standards for the primary caregivers were a little onerous. He spoke to our home rule authority as well. There were no changes regarding the dispensaries. The Zoning and Land Use Code limits a single dispensary in either the highway business district, the office service district, the industrial district or the urban enterprise district. None of these districts are considered residential districts. The City Attorney came up with a new definition in the licensing. He is calling the primary caregivers that cultivate marijuana from two to five patients primary caregiver operations. In the Zoning and Land Use, we are regulating primary caregivers that cultivate for two to five and we are advocating that they be limited to those same four zoning districts and they would not be considered something that would be an accessory to residential use. They cannot operate in a multi-family dwelling, and will be treated fully as commercial uses. Gil stated that Planning Board members had concerns as to why primary caregivers should be able to cultivate at all. The intent is that the dispensary is supposed to sell marijuana at an affordable cost to those qualifying patients and there was some recognition that a primary caregiver could be cultivating for a husband, wife or neighbor. A couple of the City Council members had the same comments as the Board and were very concerned about it. Gil stated the Zoning and Land Use is pretty simple. The Planning Board needs to provide a recommendation to the City Council on Zoning and Land Use if the Board is comfortable. City Council is planning to have a public hearing tomorrow night on zoning and the business licensing piece assuming the Board provides a recommendation.

Also, at the last Council meeting with respect to business licensing there was a recommendation made that the staff involved which is Fire, Police, Code Enforcement and City Clerk be able to temporarily suspend a license.

Bruce stated the Ashray 62 Standard for ventilation is a standard but not a code. He requested that going forward not only would there be compliance with the Ashray Standard but also require anyone who is seeking permission to be a grower to meet the Maine State Plumbing Code and the National Electrical Code both of which immediately trigger permitting and inspection and compliance with a clearly defined code. Bruce stated that would really raise the interaction of Code Enforcement and the City with anyone who was attempting to do this. This was mentioned to Gil and it was incorporated into the ordinance presented tonight. This makes it a lot more palatable, but he still has a real problem with thinking that there is any necessity to have private growers. He stated this does not make sense for our community and residents to put up with and it will create an incredible enforcement problem for Police and Code Enforcement people. The nature of the law was to ensure access to medical marijuana to patients that require it. Bruce stated he cannot endorse this portion of any ordinance that allows primary caregivers and he stated it is not necessary. He stated that if going forward the dispensary moved to Farmington and was no longer here, the ordinance could be amended to allow it to happen. It is illegal at the Federal level to grow and sustain marijuana and we are talking about not only endorsing it but promoting it, and he thinks this is absolutely wrong and cannot support this function of it.

Lucy asked Gil if we can as a City prohibit this use. Gil stated the City Attorney felt strongly that we were on very questionable grounds with respect to regulating the single growers in particular because the law makes it very clear that a patient can grow their own marijuana assuming they are a registered patient and they have a prescription. He felt by licensing the two to five that we were on solid ground but having talked to the attorney and reading his opinion he felt that we would most likely not fare well if we were challenged on outlawing the primary caregiver piece. Lucy stated that it is City Council's job to pass this; we are just giving them a recommendation.

Lucy asked if there were any other comments. Paul stated he appreciates what Bruce is saying and respects his opinion. Paul stated that if the individual caregivers are registered and abide by everything that is in the ordinance, it might be a better way to have them out in the open and recognized at a local level as opposed to having this underground. Paul felt there is a strong possibility that people instead of being registered will still grow and still provide it to people and be unlicensed. Bruce stated it would flourish anyway and it is still a violation of Federal Law. Paul stated if these regulations are propagated by the State, the State will have to control it. Gil stated Police Chief Mike Bussiere provided him with a memo from the Department of Justice and given the current federal administration, if the State moves forward and carefully regulate regulates medical marijuana, than they will probably not intervene. He stated that does not mean they can't intervene. Gil stated he would like to see the state law changed

with respect to primary caregivers for at least the two to five. By rights there should be one growth facility in the State and outlets where you can purchase it as a patient. He stated there will probably be changes down the road.

Bruce stated this is illegal activity and it is wrong for the City to endorse it. Gil stated we made it very clear to the City Attorney that we wanted to regulate it and he came back and said this is as far as we could safely go.

Mike stated that primary caregivers two to five are licensed and asked if primary caregivers for one are not regulated or licensed. Gil stated they are not regulated at a local level but will be regulated at the State level. Mike asked if the local officials know who those growers are and Gil stated the Police Department can find that information out if they need to. The City Attorney put in a confidentiality piece. The licensing of the primary caregivers engaged in cultivation for two to five patients would be handled at the City Clerk level and that information would be kept confidential. The Police Department in doing an investigation may need that information and can access it.

Bruce stated if you are growing it, it should be public knowledge so that the neighbors know what it is and who it is. Denis stated he thinks there will be tremendous enforcement issues and that people will be pressing the limits. Gil stated if we have a licensing requirement and you do not have the local license, it is a criminal act. Our standards will discourage people from doing it illegally.

Lucy asked if there are any other comments and opened it up to the public.

Denis Theriault stated he lives at 21 Marguerite Street and introduced his son Matthew. His question is how does a landlord monitor all of this on their properties. Lucy stated it is not allowed in multi-family dwellings. It is only allowed in the highway business, office service, industrial and urban enterprise districts. Denis Theriault stated he is in the highway business district and owns a nine unit building. Lucy stated it would not be allowed in a nine unit building.

Denis Theriault asked about the proximity to schools, how does that come into effect because Federal laws kick in there. Gil stated he thinks that a landlord could make it very clear that growing operations are prohibited in a multi-family dwelling or building. The proximity rule is 1,000 feet if dealing with a school and the penalties go up. The State law for dispensaries is 500 feet from schools. There was nothing for primary caregivers. We have included that 500 foot proximity rule for schools and we will also be doing background checks for primary caregivers that grow marijuana. Denis Theriault asked Gil about patient confidentiality and whether marijuana is going to be used on the premises. How do we as management companies deal with those types of issues as far as do you actually have a prescription which you cannot really ask because of the confidentiality. Gil stated you can certainly outlaw smoking of all kinds including marijuana in your building. That could be a rule for your building. Denis Theriault asked does the growing process also put out an odor and Gil stated yes. Denis Theriault stated that is the other issue, the growing process can be detrimental to other people in the building. Gil stated you may have the ability to

say that you cannot grow in your apartment building. That would be a great question for the Maine Landlord Association. Denis Theriault stated the first person that runs into this will have the cost to have to go to court in regards to it. You are creating a law that impacts the rest of the landlords in this community and the City Attorney should have looked at the impact that it will create to other people. Gil stated that we are trying to regulate something that otherwise would be unregulated locally.

Matthew Theriault asked about the odors of marijuana. Gil stated that Councilor Poulin asked us to specifically address odors in the licensing and we have an environmental performance standard for odor. It is a very rigorous standard however the odor requirement is only for non-residential uses. It is not for a single family home. Denis Theriault stated that this is bordering on being a home business. Gil stated a patient can grow his own and a primary caregiver can grow for one unless the City Council decides differently. Gil stated that if we get a complaint regarding odor, LPD will respond. Denis Theriault asked Gil if the best thing a landlord can do is call LPD if there is a problem and Gil stated yes.

Public Comments Closed.

Lucy asked if there were any other questions. Mike asked if the passage that says it should not be located within 500 feet of a school includes the property line of the school and Gil stated yes. Mike asked if the highway business district that goes down Bartlett Street would be out of the picture because that is school property right behind it and Gil stated yes that is part of Franklin Pasture.

Mike asked if it was permitted to grow marijuana outdoors and Gil stated no. You can only grow what you can consume and a patient cannot have more than 2 ½ ounces of marijuana per 15 day period. In the City of Lewiston growing cannot be visible to the outside.

Bruce stated that we don't allow chickens in Lewiston but we can grow pot. Lucy stated all we are doing is sending a favorable or unfavorable recommendation to the City Council. Lucy stated she was not thrilled with endorsing the cultivation of marijuana either. She stated we do want to regulate where a dispensary will be and we also want to regulate if at all possible the growing of the primary caregiver for two to five people. She stated she realizes this is going to be an enforcement nightmare but, whether we pass this or not, it still is going to happen.

The following motion was made:

MOTION: by **Denis Fortier** pursuant to Appendix A, Article XVII to send a favorable recommendation to the City Council to amend Article II, Section 2, Article V, Section 3, and Article XI, Section 12, 14, 15 and 16 of the Zoning and Land Use Code of the City of Lewiston regulating registered marijuana dispensaries and registered primary caregivers. Second by **Paul Robinson**.

VOTED: **3-4 (Motion Fails)**

The following motion was made:

MOTION: by **Paul Robinson** to send a favorable recommendation to the City Council to adopt Chapter 22, Business, Article XV, Medical Marijuana-Distribution and Cultivation. Second by **Denis Fortier**.

VOTED: **3-4 (Motion Fails)**

VI. OTHER BUSINESS:

- a. David stated that the Downtown Neighborhood Master Plan that was put together about a year and a half ago is a great plan and a very useable document. The green light has been given to Mark McComas to create a Downtown Neighborhood Committee which at a minimum will consist of two City Councilors, one CDBG Committee Member and one Planning Board Member. Their role will be to provide direction and implementation guidance to that plan. He stated Council does not want to see this thing sit on a shelf. He stated nothing needs to be decided tonight but to please think about who might want to sit on this Committee.
- b. Lucy stated that a number of years ago on the riverfront there was a sculpture that was gears and everyone hated it and then it disappeared. She stated she wanted to know what happened to it and that it should be donated the Museum L-A. Bruce stated the last time he saw it, it was at the solid waste facility and it was covered in three inches of dust. Denis Theriault stated that is exactly where it is. He stated you could also get the cupola also that is rotting down there also. Lucy asked staff if they could find out about both of these things and if something can be done with them. They should both be donated to Museum L-A.
- c. Denis Theriault asked if he could speak to the Board about an issue regarding the Mosque and Lucy stated yes. He gave a brief explanation of what has been happening with his properties that were across the street from the Mosque with respect to parking, trespassing, and litter. He stated he does not just have pictures to prove what is happening but that staff has witnessed the problems he is having from the Mosque located at 256 Bartlett Street. He stated he will be going before the City Council tomorrow night and wanted the Planning Board to be aware of what was happening.
- d. Any other business Planning Board Members may have relating to the duties of the Lewiston Planning Board.

VII. UNFINISHED BUSINESS:

- a. Discussion of YPLAA Survey.
- b. Zoning and Land Use Updates/Matrix: discuss proposed open space revisions, consolidation of the SR District, and adoption of the matrix (recommendation to table the matter to future date)

VIII. READING OF MINUTES:

Draft Meeting Minutes for October 18, 2010. The following motion was made.

MOTION: by **Paul Robinson** to approve the October 18, 2010 Meeting Minutes with changes. Second by **Sandra Marquis**.

VOTED: **4-0-3 (Passed,3 Abstained)**

Draft Meeting Minutes for October 25, 2010. The following motion was made.

MOTION: by **Bruce Damon** to approve the October 25, 2010 Meeting Minutes as presented. Second by **Paul Robinson**.

VOTED: **7-0 (Passed)**

IX. ADJOURNMENT: The following motion was made to adjourn.

MOTION: by **Denis Fortier** that this meeting adjourns at 7:20 p.m. Second by **Sandra Marquis**.

VOTED: **7-0 (Passed).**

The next regularly scheduled meeting is for Monday, December 13, 2010, at 5:30 p.m.

Respectfully Submitted:

Denis E. Fortier, Secretary